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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Cedar City Field Office
176 East DL Sargent Drive
Cedar City, Utah 84720

In Reply Refer To:
UT- 044
3809: UTU-77247
3600: UTU-79703

CERTIFIED MAIL-Return Receipt Requested
Certification No.: 7000 0600 0027 6768 4113

March 25, 2002

Mr. Neil Bradshaw
374 S 500 W
P.O. Box 87
Milford, UT 84751

Dear Mr. Bradshaw:

This letter is in regard to a mining operation located on public lands and falling within portions of sections 21, 22, 27, and 28, T. 35 S., R. 17 W., Iron County, Utah. The operation is being conducting under BLM Cedar City Field Office Notice UTU-77247 , and State of Utah, Division of Oil, Gas, and Minerals, Small Mine Permit, S/021/ 030. The BLM notice of intent originally dates to May 1999, and was amended in July 2000, and January 2001. The current authorization calls for the disturbance of up to 5 acres of land by surface mining of altered rhyolite, and the on-site crushing, screening, and stockpiling of the stone. The stone is sold as decorative landscaping rock, principally as a ground cover. In the hope of summarizing and clarifying the history of this operation, I will begin by abstracting my case files on this operation to date.

UTU-77247 covers a notice of intent filed by yourself in May 1999, to cover ~1 acre of exploratory backhoe trenching within various placer claims located within portions of sections 21, 22, 27 & 28, T. 35 S., R. 17 W., Iron County. You amended the notice in July 2000 to allow limited shallow surface mining, including drill and blasting of in-place outcrops. Several prospects were opened to remove small quantities of an altered rhyolite, presumably for test marketing as an uncommon variety landscaping rock. In December 2000, you met with me and discussed the common/uncommon variety aspects of the material and I indicated at that time that unless you could provide data that would substantiate a finding that the rock was uncommon, that the BLM position would be that the material was a common variety and would have to be purchased under a materials sales contract. At that time you obtained a sales contract for 200 cyds of the stone at a royalty rate of $0.40/cyd. The notice was amended again in January 2001 to allow for ongoing quarrying of the altered rhyolite, along with on-site crushing, screening, and stockpiling. The disturbed area was initially proposed to be ~ 2 acres, with the potential for the operation to be expanded to no more than 5 acres. By March 2001, the site was fully active as a quarrying operation with on-site crushing, screening, and stockpiling of landscape rock. The quarry was being operated by 3H Landscape Products of St. George (3H), under your approved notice. On March 13, 2001, you paid for $1000.00 worth of material, this being 2,500 cyds at the royalty rate of $0.40/cyd.

On August 2001, you met with me to discuss long-term expansion plans for the quarry operations and what options were available to obtain the necessary authorization. As a result of that meeting, you indicated that I should begin work on re-authorizing the site as a material sales contract to be managed entirely under the

mineral materials (43 CFR 3600) regulations. I established case file UTU-79703, which was to serve as the case file to cover the authorization under the mineral material regulations. The plan was to re-authorize the existing activity and provide for expansion of the operation. The UTU-77247 (surface management) authorization would be superceded by the UTU-79703 (mineral materials) authorization. I subsequently prepared an environmental assessment (EA) based on a long-term mining proposal to disturb up to 16.3 acres at the site and the EA was signed on November, 30, 2001. During the period of March through December 2001, 3H was intermittently active at the site, removing a total of ~4,000 cyds of stone through the end of the year.

In February and March of 2002, I periodically was in contact with yourself and with Mr. Scott Holt of 3H to try to finalize the terms of sales contract. In early March, I became aware of an error I had made in regards to the royalty rate being used at the site. The current BLM area-wide appraisal called for a royalty rate of $0.80/ton for crushed landscaping rock, rather than the $0.40/cyd rate I had originally applied. Following this discovery, I informed you that I would honor the $0.40/cyd rate for all removals made from the site up to the end of December 2001, but that the royalty rate would be $0.80/ton for all removals after December 2001 under a sales contract. On being informed of the higher royalty rate, you requested that I have the BLM Mineral Appraiser (Doug Bauer of the BLM USO) perform a site-specific appraisal. I told you that I would contact Mr. Bauer regarding the issue, but that it was unlikely that such an appraisal would find a basis for any downward adjustment of the area-wide royalty and there was a possibility that the rate could be increased. At that time you also indicated, given the higher royalty rate, that you might have to pursue removing the material under the Mining Law as an uncommon variety. I again told you it was my impression, given the current markets and sales price for the material, as well as my reading of the applicable case law, that there was little likelihood the material would be found to be uncommon. I provided you with a copy of the chapter on common and uncommon varieties from Maley's Mineral Law (6th Edition, 1996) and also a copy of the *McClarty* decision.

On March 22, 2002, you signed a sales contract covering an addition 1,350 cyds of rock removed from the site at the rate of $0.40/cyd. This payment, together with the March, 2001 payment for 2,500 cyds should account for all production and removals from the site by 3H through December, 2001 (total reported production of 3H was 3,850 cyds of material at an estimated material density of 1 ton/cyd, which I accepted lacking any site-specific material density measurements). The sales contract stipulated that the $0.40/cyd royalty would only apply to removals up to December 2001; any subsequent removals would be charged at a royalty rate of $0.80/ton unless site-specific appraisal supported a different royalty rate.

I believe there are three options available to you to remain in compliance with the applicable BLM regulations at this site. These options are:

1. Finalize the pending re-authorization of the site as an exclusive sales contract with payment of a material royalty as determined by BLM appraisal.

2. Continue operations in the short-term under the current notice of intent, with payment of royalty on all material removed into an escrow account until a ruling is made regarding the whether the stone is an uncommon variety and subject to removal under the Mining Law. Before January 20, 2003, it will be necessary for you bring the operation into compliance with the new 3809 regulations, including the posting of a financial security covering all areas proposed for disturbance, and the continuance of depositing royalties into a escrow account until a ruling is made regarding the whether the stone is an uncommon variety.

3. Terminate all operations on the site and perform site reclamation of all disturbances.

In our recent conversations, you have indicated that you might be pursuing option 2, so I will devote the remainder of this letter to address the issues relevant to that option.

The Materials Act of July 31, 1947 (61 Stat. 681) as amended by the Act of July 23, 1955 (69 Stat. 367, Public Law 167) excluded common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay from location under the General Mining Law. However, the 1955 Act recognized uncommon varieties of sand, stone, pumice, pumicite, cinders, and exceptional clay as still being subject to entry and location under the Mining Law. To distinguish a common variety deposit of these materials from an uncommon variety deposit, the Courts (McClarty v. Secretary of the Interior, 408 F. 2d. 907, 908 (9th Cir. 1969)) have set forth certain guidelines. These guidelines can be summarized as follows:

1. There must be a comparison of the mineral deposit in question with other deposits of such minerals generally.

2. The mineral deposit in question must have a unique property.

3. The unique property must give the deposit a distinct and special value.

4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use, and

5. The distinct and special value must be reflected by the higher price that the material commands in the marketplace, or by reduced cost or overhead so that the profit to the claimant would be substantially more.

The unique property which gives the deposit a distinct and special value must be an intrinsic factor that is inherent in the deposit. Extrinsic factors such as scarcity, proximity to market, value added by manufacturing or marketing techniques, and other external factors unrelated to the deposit itself must not be counted towards giving the deposit a distinct and special value.

As a certified mineral examiner, familiar with the applicable case law and the material being extracted from the site, I am of the preliminary opinion that the stone that is being removed from the site by this operation is "common variety" mineral material not subject to location under the General Mining Law of May 10, 1872, as amended. This opinion is based on my opinion that the stone in question does not display any unique property that gives it a special and distinct value as required by the *McClarty* decision.

If you chose to exercise option 2, I am hereby requesting all information pertaining to your contention that the mineral deposit contained in the subject claims is uncommon. In providing this information, please keep in mind the aforementioned guidelines on the relevant factors on which to argue your contention. You have 30 days from the receipt of this letter to provide the information. Failure to provide information by the deadline will result in a mineral report being prepared by myself to our State Office, immediately. This mineral report will recommend that a contest complaint issue challenging the mining claims involved.

Please contact me directly, at (435) 865-3040, if you have any questions.

Sincerely,

Ed Ginouves
Mining Engineer

xc: Tom Munson, DOGM
Scott Holt, 3H Landscape Products, 2160 E. Riverside Dr., St. George, UT 84790